

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN STOKELY,)	
Petitioner)	
)	CIVIL ACTION
v.)	
)	
EDWARD KLEM, et al.,)	NO. 03-1740
Respondents)	

Padova, J.

MEMORANDUM

October __, 2003

Before the Court is John Stokely's pro se Petition for Writ of Habeas Corpus brought pursuant to 28 U.S.C. § 2254 ("Petition"). For the reasons that follow, the Court will adopt in part the Report and Recommendation of Magistrate Judge Thomas J. Rueter, and will deny the Petition in its entirety.

I. BACKGROUND

On May 27, 1998, Petitioner John Stokely pled guilty to murder generally and abuse of a corpse before the Honorable Carolyn Engel Temin of the Court of Common Pleas of Philadelphia County. After a hearing before Judge Temin concerning Petitioner's degree of guilt, Judge Temin convicted Petitioner of murder in the first degree and sentenced him to life imprisonment.

According to the state court record, the conviction stemmed from a December 28, 1996 incident, in which Petitioner, believing that his girlfriend had infected him with a venereal disease, fatally shot her in the temple. With the help of a friend, Petitioner then drove the decedent's body to a park near Tacony

Creek and left it there. Several days later, Petitioner returned and set fire to the corpse, apparently in an attempt to remove any trace of his fingerprints from the body.

After his conviction, Petitioner filed a direct appeal in Pennsylvania Superior Court. The sole issue raised on this appeal was Petitioner's claim that there was insufficient evidence to support his conviction for First Degree Murder, given the fact that he was under the influence of PCP and other illegal drugs at the time of the murder. The Superior Court rejected this claim in a memorandum opinion dated November 15, 1999. Commonwealth v. Stokely, No. 2067 (Pa. Super. Nov. 15, 1999). Petitioner's request for allowance of appeal was denied by the Pennsylvania Supreme Court on May 31, 2000. Commonwealth v. Stokely, 758 A.2d 1199 (Pa. 2000) (Table). On July 19, 2000, Petitioner filed a pro se petition for collateral relief under Pennsylvania's Post Conviction Relief Act (the "PCRA"), 42 Pa. C.S.A. § 9541, et seq. The PCRA court dismissed the PCRA Petition on June 25, 2001, and the Superior Court affirmed the dismissal on September 16, 2002. Commonwealth v. Stokely, No. 2226 EDA 2001.

On March 25, 2003, Petitioner filed the instant pro se petition for a writ of habeas corpus in this Court. In his Petition, Petitioner first asserts that his guilty plea was not entered into voluntarily, because he did not understand the "nature of the crime" that he was pleading guilty to, and specifically did

not understand the difference between the various degrees of murder for which one may be convicted under the Pennsylvania Criminal Code. (Pet. at 5.)

Petitioner further asserts that his trial counsel was ineffective for the following three reasons: 1) erroneously informing Petitioner of the possibility that he would receive the death penalty if he went to trial in order to induce him to plead guilty, despite the fact that the prosecution was procedurally barred from seeking the death penalty under Pennsylvania law; 2) failing to adequately explain the nature of the charge of First Degree Murder to Petitioner; and 3) failing to present an adequate defense for diminished capacity. (Pet. at 10.) Respondents argue that all of Petitioner's claims are procedurally barred and without merit.

II. THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. § 636, the Court referred this case to Magistrate Judge Thomas J. Rueter for a Report and Recommendation. The Magistrate Judge recommended that the instant Petition be denied. Upon examination of Petitioner's claims, the Magistrate Judge found that none of them had been properly raised at the state court level, and, therefore, that these claims were unexhausted. See 28 U.S.C. §2254 (b)(1)(A). The Magistrate Judge further found that Petitioner was barred from bringing these claims in state court by the statute of limitations. The Magistrate Judge further

found nothing in the record which could either represent cause for the default or indicate that this Court's failure to consider the claim would result in a fundamental miscarriage of justice. The Magistrate Judge therefore found that this Court could not consider Petitioner's habeas corpus claims. In his objections to the Report and Recommendation, Petitioner asserts that he did fairly raise all of the issues in the instant habeas corpus petition to the state court, and that, therefore, none of these claims is procedurally defaulted. In accordance with 28 U.S.C. § 636(b), the Court has now conducted a de novo determination of the issues raised in Petitioner's objections.

III. DISCUSSION

A. Counsel Failed to Present Adequate Diminished Capacity Defense

Petitioner asserts that his counsel was ineffective for failing to present an adequate defense of diminished capacity in the hearing before Judge Temin concerning Petitioner's degree of guilt. Specifically, Petitioner argues that, "While counsel presented some evidence in support of diminished capacity, the record is barren of any medical-fact examination that organic brain damage may have resulted from Petitioner's chronic addiction to PCP, Xanax and cough syrup." (Pet. at 8)(emphasis in original).

Respondents argue, and the Magistrate Judge found, that this claim was never exhausted in state court, and that therefore it

cannot be considered in the instant Petition. A court generally cannot consider claims by a state prisoner brought in a petition for a writ of habeas corpus unless the petitioner has exhausted the remedies available in state court. 28 U.S.C. 2254 (b)(1)(A). A claim will not be considered exhausted unless the petitioner "fairly presents" this claim in the state courts. McCandless v. Vaughn, 172 F.3d 255, 260 (3d Cir. 1999). "To 'fairly present' a claim, a petitioner must present a federal claim's factual and legal substance to the state courts in a manner that puts them on notice that a federal claim is being asserted." Id. at 261 (citation omitted). Furthermore, it is not sufficient for purposes of exhaustion that all of the facts necessary to support the federal claim were presented to the state courts, or that the federal and state law claims are "somewhat similar." Anderson v. Harless, 459 U.S. 4, 6 (1982). On the other hand, "the petitioner need not have cited 'book and verse' of the federal constitution." McCandless, 172 F.3d at 261 (citation omitted). The only issue in the PCRA Petition addressed by the PCRA court was Petitioner's claim that his trial counsel should not have advised him to plead guilty when his trial counsel knew that there were viable defenses available to him. (PCRA Court opinion, Sep. 16, 2002, at 5-6.) The PCRA court held that such a claim was merely a recantation of Petitioner's prior argument that there was insufficient evidence necessary to convict him of first degree murder, an argument which

had been rejected on direct appeal. (Id.) The PCRA court therefore dismissed the PCRA petition. (Id.) The PCRA Court never addressed Petitioner's claim that his trial counsel was ineffective for failing to produce adequate evidence of Petitioner's diminished capacity at the degree of guilty hearing before Judge Temin.

Read broadly, Petitioner's PCRA Petition does assert the general legal theory that his counsel was ineffective for failing to present evidence concerning the extent of Petitioner's drug use and the effect of such drug use on Petitioner's state of mind at the time of the crime. Specifically, in Section C of the PCRA Petition, which is labeled with the heading "Defendant has a defense worthy of a jury's consideration" Petitioner asserts that "Due to the lack of information or in this case misinformation from the trial counsel, the Defendant has just recently learned the effects that the medical field contends that PCP has on an individual who constantly uses the illicit substance." (PCRA Pet. at 4). The PCRA Petition further asserts that "Defendant states that his diminished capacity in this criminal homicide case matter, negated the specific element of intent which the crime of First Degree Murder requires, and therefore, the ill advice of his attorney in presenting his case and not mitigating the areas in which the Defendant was in an intoxicated frame of mind, show the improper inducement for failure to explain to the Defendants all rational strategic and tactical decision in which the Defendant

could make given the full scope of the information." (PCRA Pet. at 3.) Based upon this language, the Court finds that the PCRA Petition did put the PCRA court on notice that Petitioner was alleging the ineffective assistance of his trial counsel, and further that one aspect of his counsel's ineffectiveness was his counsel's failure to present adequate evidence of the effect of Petitioner's drug use on his state of mind at his degree of guilt hearing.

However, the fact that a Petitioner has previously raised the same general legal theory to the state courts is not sufficient for a finding of exhaustion. Rather, the United States Court of Appeals for the Third Circuit ("Third Circuit") "has consistently held that in complying with the exhaustion requirement a habeas petitioner must not only provide the state courts with his legal theory as to why his constitutional rights have been violated, but also the factual predicate on which that legal theory rests." Landano v. Rafferty, 897 F.2d 661, 669-70 (3d Cir. 1990). Thus, where a petitioner attempts to introduce new evidence in a habeas corpus proceeding which would place his claim in a "significantly stronger posture" than it was in during the state court proceedings, a court will not consider the claim as exhausted. Demarest v. Price, 130 F.3d 922, 935-36 (10th Cir. 1997) (citations omitted.) In the instant Petition, Petitioner's entire claim concerning his counsel's ineffectiveness at his degree of guilt

hearing is based upon his counsel's failure to specifically present evidence concerning organic brain damage and drug abuse.¹ Indeed, Petitioner himself admits, and the record amply demonstrates, that his counsel did present a certain amount of evidence in support of Petitioner's diminished capacity claim at the degree of guilt hearing. However, Petitioner maintains that, "While counsel presented some evidence in support of diminished capacity, the record is barren of any medical-fact examination that organic brain damage may have resulted from Petitioner's chronic use/addiction to PCP, Xanax and cough syrup." (Pet. at 7.)

Nowhere in the PCRA Petition does Petitioner raise the issue of organic brain damage, or provide the PCRA court with any clue as to the specific evidence that his counsel failed to present in support of his diminished capacity defense at his degree of guilt hearing. Thus, even had the PCRA court interpreted Petitioner's claim to allege ineffective assistance on the part of his trial counsel at the degree of guilt hearing, there would have been absolutely no factual basis upon which the court could have questioned his counsel's performance. Therefore, the Court finds that Petitioner did not provide the state courts with fair notice of this claim, and, consequently, that this claim has not been exhausted. Furthermore, as the statute of limitations bars

¹ Petitioner has attached an appendix to his Petition containing articles discussing the link between drug addiction and brain disease.

Petitioner from currently raising this claim in state court, the Court holds that the claim is procedurally defaulted. Furthermore, Petitioner has not shown cause for the default and has not shown that this Court's failure to consider the claim will result in a fundamental miscarriage of justice. This Court cannot, therefore, consider this claim, and must dismiss it.

Even were the Court to hold that Petitioner's claim concerning his counsel's ineffectiveness at the degree of guilt hearing had been properly exhausted, the claim would still fail on the merits. In Strickland v. Washington, 466 U.S. 668 (1984), the United States Supreme Court held that criminal defendants have a Sixth Amendment right to "reasonably effective" legal assistance, id. at 687, and determined that a defendant claiming ineffective assistance of counsel must show the following:

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel was not functioning as the "counsel" guaranteed by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

Id. In order to meet his burden of proving ineffectiveness, a "defendant must show that counsel's representation fell below an objective standard of reasonableness." Id. at 688. The petitioner "must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment.

The court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." Id. at 690. In order to establish prejudice, the defendant "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. "Generally, to sustain an ineffectiveness claim, the petitioner must make concrete allegations of actual prejudice and substantiate them or risk summary dismissal." Schmitz v. Carroll, Civ. A. No. 02-1527, 2003 WL 22299028, at *17 (D. Del. Oct. 7, 2003)(citing Dooley v. Petsock, 816 F.2d 885, 891-92 (3d Cir. 1987)).

Under Pennsylvania law, evidence of diminished capacity at the time of the crime as a result of voluntary drug use can reduce a murder charge from a higher to a lower degree, but only if a defendant establishes that "he was overwhelmed to the point of losing his faculties and sensibilities." Commonwealth v. Kuzmanko, 709 A.2d 392, 399 (Pa. Super. 1998.) In this case, as noted, supra, Petitioner's counsel presented a substantial amount of evidence at the degree of guilt hearing in support of Petitioner's claim of diminished capacity, including the expert testimony of Dr. Marlowe. Dr. Marlowe testified that Petitioner might have been suffering some psychotic and paranoid experiences at the time of the murder.

(Tr. 6/2/98 at 36.) However, Dr. Marlowe also testified that Petitioner had the cognitive ability to make decisions and to carry those decisions out at the time of the murder. (Tr. 6/2/98 at 41.) Based upon this testimony, and upon "the overwhelming weight" of the evidence in the record, the trial court found Petitioner guilty of First Degree Murder.² (Opinion at 3.)

There is no support in the record for the assertion that counsel's performance fell below an objective standard of reasonableness when he failed to introduce evidence concerning the link between drug use and organic brain damage, particularly given the fact that there is no evidence that Petitioner himself actually suffered from any organic brain damage as a result of his drug use. Furthermore, even assuming, arguendo, that counsel's performance was deficient for failing to introduce evidence on the link between drug use and organic brain damage, given the evidence in this record, it is not reasonably probable that, but for counsel's error, the result would have been different. Indeed, Petitioner himself concedes this point when he writes, "While Petitioner cannot say with any degree of certainty that putting forward evidence of organic brain damage would have altered Judge Temin's

² The evidence in this case included the fact that, after Petitioner killed his victim, Petitioner enlisted the help of a friend to wrap the body in trash bags, clean up the blood, and drive the body to a remote location where it could be hidden. (Tr. 6/2/98 at 26-28.) None of these actions is consistent with Petitioner's claim of diminished capacity.

decision, the Commonwealth cannot say otherwise." (Pet. at 8.) This claim therefore fails on the merits.

B. Counsel Improperly Raised the Threat of the Death Penalty to Induce Petitioner to Plead Guilty

Petitioner asserts that his trial counsel rendered ineffective assistance by advising him to plead guilty in order to avoid the death penalty, in spite of the fact that the prosecution was at that point procedurally barred from charging Petitioner with the death penalty. Petitioner never claimed in state court that his attorney erroneously informed him that he was eligible for the death penalty notwithstanding the fact that the prosecution was procedurally barred from bringing it. Thus, this claim has clearly not been exhausted. Furthermore, as the statute of limitations bars Petitioner from currently raising this claim in state court, the Court holds that the claim is procedurally defaulted. Furthermore, Petitioner has not shown cause for the default and has not shown that this Court's failure to consider the claim will result in a fundamental miscarriage of justice. This Court cannot, therefore, consider this claim, and must dismiss it.

C. Guilty Plea Was Not Voluntary

Petitioner asserts that his guilty plea was not knowing and voluntary, and was, therefore, in violation of the due process clause, because the nature of the charges against him were not adequately explained to him by the state court. See Boykin v. Alabama, 395 U.S. 238 (1969). Petitioner admits that he "knew

that he was charged with First and Third degree murder," and that a judge would ultimately determine which degree of murder he would be convicted of. (Pet. at 5.) However, Petitioner asserts that no one ever provided him with a definition of First and Third Degree Murder.

Respondents argue, and the Magistrate Judge found, that this claim was procedurally defaulted. Petitioner never specifically argued before the state courts that his plea was involuntary because he was not given an adequate definition of First and Third Degree Murder under Pennsylvania law. However, in his PCRA Petition, Petitioner clearly argued that his guilty plea was involuntary because, inter alia, he was never informed by either his counsel or the state court that his drug dependence could have resulted in a reduction of the charges from First to Third degree murder. (PCRA Pet. at 2.) Thus, Petitioner provided the state courts with notice that he wished to challenge the voluntariness of his plea, and further provided the state courts with notice that part of the basis for this challenge was the failure of the trial court, and his attorney, to adequately explain the nature of the possible charges that he faced. The Court holds that Petitioner gave the state courts fair notice of this claim, and that this claim has therefore been properly exhausted.

Judge Temin engaged in an extensive colloquy with Defendant before he entered his plea of guilty. During this colloquy,

Petitioner admitted to killing the decedent. Judge Temin informed Petitioner that, if he pled guilty to murder generally, a trial before a judge would be conducted, and that judge would determine the specific charge that Petitioner would be convicted of. (Tr. 5/27/98 at 8.) Judge Temin further explained that the verdict would be either murder in the first degree, murder in the third degree, voluntary manslaughter or involuntary manslaughter, and further described the possible range of sentences for each of the these crimes. (Tr. 5/27/98 at 8-10.) The record reflects that Petitioner indicated that he understood all of this information. (Id.) Thus, Judge Temin clearly informed Petitioner of the possibility that he would be convicted of First Degree Murder, and further informed Petitioner that this determination would be made by a judge after considering all of the evidence.

Because Petitioner knowingly, intelligently and voluntarily pled guilty to murder generally and consented to have the degree of his guilt determined by a judge, Petitioner cannot argue that his plea was involuntary simply because he himself may have not completely understood the subtle distinctions between First and Third Degree Murder under Pennsylvania law. This claim therefore fails on the merits.

D. Trial Counsel Inadequately Explained the Concept of First Degree Murder to Petitioner

In a similar vein, Petitioner also argues that his trial counsel was ineffective for failing to adequately explain the

nature of the charge of First Degree Murder to him. Ostensibly, Petitioner is asserting that, if his attorney had provided him with the correct definition of First Degree Murder, his decision to plead guilty might have been different. When a challenge is made to a guilty plea based upon ineffective assistance of counsel, prejudice is shown by demonstrating that "there is a reasonable probability that, but for counsel's errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockart 474 U.S. 52, 59 (1985). As discussed, supra, Judge Temin engaged in a careful colloquy with Petitioner in which she clearly informed him that he risked a conviction for First Degree Murder, and that a judge, not Petitioner or his attorney, would determine whether he would be convicted of this crime. Given the thorough colloquy, Petitioner cannot establish that the failure of his attorney to "adequately" explain the charge of First Degree Murder to him (apparently by failing to provide Petitioner with a technical legal definition of the charge) represented conduct which fell below an objective standard of reasonableness. Furthermore, Petitioner cannot establish that, but for counsel's failure, there is a reasonable probability that Petitioner would have refused to plead guilty to the crime of murder generally. Nowhere in his Petition does Petitioner directly assert that, if his counsel had given him an adequate definition of First Degree Murder, he would have failed to plead guilty to the crime of murder generally.

Moreover, Petitioner does not even indicate what effect his alleged misunderstanding of the concept of First Degree Murder had on his decision to plead guilty to murder generally.³ Thus, Petitioner has failed to demonstrate prejudice resulting from his attorney's alleged ineffectiveness in this regard. See Dooley v. Petsock, 816 F.2d 885, 891-92 (3d Cir. 1987) (holding that a petitioner had failed to adequately demonstrate prejudice resulting from counsel's ineffectiveness where the petitioner never asserted that, but for the errors of his counsel, he would not have pled guilty to the charges.) This claim therefore fails on the merits.

³ Indeed, according to Petitioner, he understood the crime of First Degree Murder to require the presence of premeditation, which he understood to mean "to plan or consider beforehand." (Pet. at 6). Petitioner argues that he did not understand that the specific intent to kill required for a conviction of First Degree Murder could be formed in a fraction of a second before the crime is committed. (Pet. at 6; see also Commonwealth v. Sattazahn, 631 A.2d 597, 602 (Pa. Super. 1993)). Thus, Petitioner's erroneous understanding of the state of mind required for First Degree Murder is actually narrower than the definition he now understands is correct, and it appears that anyone guilty of First Degree Murder under Petitioner's erroneous understanding would also necessarily be guilty under the correct understanding. This is not consistent with the argument that Petitioner would have refused to plead guilty to the crime of murder generally had he correctly understood the concept of First Degree Murder. Petitioner may be arguing that, because he believed that the definition of First Degree Murder was much narrower than was actually the case, he pled guilty believing that the evidence would be insufficient to convict him of First Degree Murder at his degree of guilt hearing. However, such thinking flies in the face of Judge Temin's clear instruction that Petitioner risked a conviction for First Degree Murder if he pled guilty to the charge of murder generally, and that a judge, and not Petitioner, would determine his degree of guilt.

IV. CONCLUSION

For the foregoing reasons, the Court adopts in part the Report and Recommendation of Magistrate Judge Rueter, and denies the instant Petition for Writ of Habeas Corpus in its entirety.

An appropriate order follows.

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JOHN STOKELY,)	
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Respondents)	

ORDER

AND NOW, this 20th day of October, 2003, upon careful and independent review of Petitioner's Writ of Habeas Corpus, the Report and Recommendation of Magistrate Judge Thomas J. Rueter, the state court record, and all related submissions, **IT IS HEREBY ORDERED** as follows:

1. For the reasons discussed in the accompanying memorandum, The Report and Recommendation is adopted in part.
2. The Petition for a Writ of Habeas Corpus is **DENIED** in its entirety.
3. There are no grounds on which to issue a certificate of appealability.

BY THE COURT:

John R. Padova, J.

